



Arnold Schwarzenegger, Governor
State of California
Business, Transportation and Housing Agency

Department of Managed Health Care
980 Ninth Street, Suite 500
Sacramento, CA 95814-2725
(916) 323-0435 -Phone
(916) 323-0438 -Fax
enforcement@dmhc.ca.gov

November 19, 2007

SENT VIA U.S. MAIL

Lyle Swallow
Assoc. General Counsel
California Physicians' Service
dba: Blue Shield of California
P.O. Box 7168
San Francisco, CA 94120-7168

**RE: Independent Medical Review Process
Enforcement Matter Nos.: 06-126, 06-127, 06-146, and 06-154**

LETTER OF AGREEMENT

Dear Mr. Swallow:

The Department of Managed Health Care's (DMHC) Office of Enforcement (Enforcement) conducted an investigation into three individual matters pertaining to California Physicians' Service, dba Blue Shield of California's (Blue Shield) independent medical review (IMR) process. These matters are designated above as numbers: 06-126, 06-127, and 06-146, and were individually referred to Enforcement by the HMO Help Center. At about the same time, the Help Center began seeing a trend of delays in implementing IMR decisions after those decisions were communicated to Blue Shield. Such delays were inconsistent with Health & Saf. Code, § 1374.34, subd. (a), which requires a health care service plan to promptly implement an IMR decision within five (5) working days. As a result, the DMHC's Division of Plan Surveys conducted a focused on-site survey, reviewing Blue Shield's IMR processes. Once completed, Plan Surveys referred its findings to Enforcement, resulting in an additional matter designated above as number 06-154.

Based on Enforcement's investigation of the above-referenced referrals, the DMHC finds that Blue Shield violated Health and Safety Code section 1374.34, by failing to timely implement IMR decisions as required by law. The DMHC also finds that Blue Shield violated Health and Safety Code section 1367.01, subdivision (h)(3), by failing to notify the provider of the resulting authorization to provide services within 24 hours, and failing to notify the enrollee of such authorization within two (2) business days.

Matter ID Nos.: 06-146, 06-127, 06-146, and 06-154
Doc. No.: 25010

Substantiating the violation of Health and Safety Code section 1374.34 is the Division of Plan Surveys' findings during its routine medical survey in April of 2006. At that time, the DMHC found that Blue Shield did not consistently implement IMR decisions in a timely manner, based on its review of 27 randomly selected files of IMR decisions received by Blue Shield during the period of January 2005 to February 2006. Of those 27 files, only 60 percent of the pre-service denials complied with Health and Safety Code section 1374.34's five working-day deadline, and of the post-service denials, only 45 percent complied with section 1374.34's requirements. Moreover, as for Health and Safety Code section 1367.07, subdivision (h)(3), none of the randomly selected pre-service denial files complied with the law requiring notification to providers within 24 hours, and only 40 percent of those same files complied with the requirement to notify enrollees within two (2) business days.

Based on the inquiries from the Help Center in early 2006, as noted above, Blue Shield undertook an analysis of its then-current process for implementing IMR decisions. This analysis included identification of deficiencies in the process, as well as initiation and development of corrective actions. Thus, at the outset of the survey, as well as when the above findings were discussed with plan officials, Blue Shield acknowledged that there were opportunities for improvement and advised the DMHC that corrective actions had been initiated. Such corrective action included: staff assignment changes, assigning IMR activity to the Grievance Department for better oversight, re-designing the process for IMR decision implementation, better staff training, self-auditing IMR overturn cases beginning April 2006, and inclusion of the IMR audit activity in Blue Shield's overall Quality Management Program.

Blue Shield's corrective action plan proved successful, as confirmed by the DMHC's follow-up survey. Surveyors found that Blue Shield's subsequent compliance efforts included: logging, authorizing, and executing all IMRs received in a timely manner, including an auto-authorization upon receipt of the IMR decision. Presently, Blue Shield accepts the IMR decision without deliberation and authorizes implementation of the decision the day of receipt. For pre-service requests, Blue Shield's policy is to notify the provider by telephone and fax the day the decision is received. Also for pre-service requests, Blue Shield's policy is to notify the enrollee by telephone and by letter the day the decision is received. For post-service IMR decisions, Blue Shield's policy is to pay the provider, or reimburse the enrollee, respectively, within the time frames required by law.

Furthermore, DMHC follow-up surveyors reviewed 49 randomly selected files from a total of 175 IMR decisions received by Blue Shield from May 2006 to January 2007. Of the 49 files reviewed, 32 cases were pre-service denials, and 17 were post-service denials. Of the 32 pre-service denial files, Blue Shield timely implemented the IMR decisions in all 32. In addition, Blue Shield timely notified both the provider and enrollee, as required by law, in all 32 cases. Of the 17 post-service denials, two could not be paid by Blue Shield because the claims were not yet submitted for payment. And of the remaining 15 post-service denial files, Blue Shield paid all but two claims in a timely manner, making Blue Shield compliant 87 percent of the time.

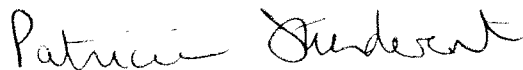
In addition to taking the described corrective action, Blue Shield has also agreed to make a charitable donation of \$500,000.00 to the National Health Law Program's Health Consumer

Alliance (HCA), a California-based non-profit, tax-exempt, collaboration of nine local health consumer centers, and two statewide support centers, which have pursued a joint mission of helping consumers obtain essential health care. The donation will fund HCA's two-year project: "Improving the HMO Grievance and Appeal Process Through Education, Outreach and Independent Monitoring."

The DMHC appreciates Blue Shield's cooperation in resolving these matters. Moreover, Blue Shield's donation to HCA shows a commitment to educate not only its own members, but all of California's health care consumers about their rights to grieve, appeal, and pursue independent medical review of the decisions affecting their individual health. Blue Shield's cooperation with the DMHC also shows a willingness to provide continued monitoring of plan practices to ensure future compliance. Thus, the Department considered all of the above as mitigation in assessing an administrative penalty.

With respect to such penalty, in consideration of all of the above, including the noted violations, the evidence in support, as well as the marked improvements as a result of Blue Shield's corrective action plan, pursuant to Health and Safety Code section 1386, subdivision (b)(6), the DMHC assesses an administrative penalty against Blue Shield in the amount of \$500,000.00. Blue Shield acknowledges the DMHC's findings noted herein and in the public reports generated as a result of the non-routine surveys, and has concluded that it is in its best interest, and the best interest of its members, to resolve this matter at this time, and has agreed to pay the penalty. In addition, the DMHC agrees that execution of this Letter of Agreement, and payment of the penalty, will settle these Enforcement matters, and all issues, accusations, and claims the DMHC has, or could have, against Blue Shield based on the above-noted survey findings relating to IMR implementation, and all related files.

Sincerely,

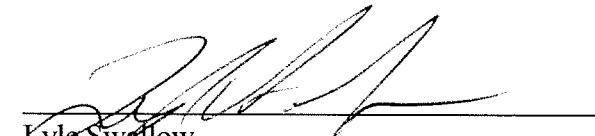


Patricia Sturdevant
Assistant Chief Counsel
Office of Enforcement

AAA:mrr

Accepted by California Physicians' Service, dba: Blue Shield of California

DATE: Nov 21 2007



Lyle Swallow
Assoc. General Counsel
California Physicians' Service
dba: Blue Shield of California